

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS
OF ANNE MATHIE, LEGAL MEMBER OF THE FIRST-
TIER TRIBUNAL WITH DELEGATED POWERS OF
THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber
Rules of Procedure 2017 ("the Rules")**

in connection with

**257 Pittencrieff Street, Dunfermline, Fife KY12 8AW ("the
property")**

Case Reference: FTS/HPC/EV/18/0332

**Kingdom Initiatives Limited ('the
applicant')**

Ms Hope Clark ("the respondent")

1. On 9 February 2018 paperwork was received from the applicant via their solicitor seeking an eviction order. The application stated that eviction was being sought in terms of Rule 66 (Possession on Termination of Short Assured Tenancy). A paper apart to the application stated that

'On or around 1 July 2015, Hope Clark (the "Tenant") entered into a Short Assured Tenancy Agreement with Kingdom Initiatives Limited (the "Landlord") in respect of 275 Pittencrieff Street, Dunfermline, Fife, KY12 8AW (the "Property")...In terms of clause 4 of the Agreement, the Agreement commenced on 1 July 2015 and ended on 28 January 2016, and continued, in terms of the Agreement, month to month thereafter, with tacit relocation thereby operating.

On or about 17 October 2017 the Landlord served on the Tenant a Notice to Quit requiring the Tenant to remove from the Property as at 28 December 2017. In addition, on or about 17 October 2017 the Landlord served on the Tenant a Notice in terms of Section 33(1) of the Act. Said notices gave notice that the Landlord was seeking possession of the Property as at 28 December 2017.

The Tenant has failed to vacate the property on or after 28 December 2017. In the circumstances he has no right or title to remain in the Property following the service of said Notices. In terms of Section 33(2) of the Act, an order for possession must be granted if the Tribunal is satisfied:

- (a) The short assured tenancy has reached its ish;*
- (b) That tacit relocation is not operating;*
- (c) That no further contractual tenancy is in existence; and*
- (d) That the Landlord has given a notice stating that he/she requires possession of the house in terms of Section 33(1) of the Act*

In the circumstances, the short assured tenancy has reached its ish, tacit relocation is not operating, there is no further contractual tenancy and Notice in terms of Section 33 of the Act has been given. In the circumstances, an Order for Recovery of Possession of the Property should be granted as requested.'

Attachments were provided with the application form to support the application detailed in an Inventory of Documents comprising

The Short Assured Tenancy Agreement dated 1 July 2015;
Copy Notice under Section 32 of the Housing (Scotland) Act 1988 (AT5 Notice) dated 26 June 2015;
Copy Notice in terms of Section 33 (1)(d) of the Housing (Scotland) Act 1988 dated 17 October 2017;
Copy Notice to Quit dated 17 October 2017;
Copy Notice to the Local Authority in form prescribed by Section 11(3) of the Homelessness Etc. (Scotland) Act 2003 as required by Section 19(a)(1) of the 1988 Act, dated 8 February 2018

In terms of Rule 5 of the Chamber Rules further information was requested from the Applicant's representative including a request from The Tribunal by letter dated 22 February 2018 of 'Verification of Service of Notice to Quit either by Recorded Delivery or Sheriff Officers'.

An email response was received from the Applicant's representative dated 8 March 2018 attaching a document titled 'Proof of Posting Confirmation Document' stating that a copy of a Notice of Proceedings to Mr R Russell was posted through the letterbox of the Property at 3.05 pm on 17 October 2017 by Agnes Murray and Elaine Osborne. There is no mention of service of the Notices on the Respondent.

A further letter was sent from the Tribunal to the Applicant's representative dated 22 March 2018 asking for clarification, *inter alia*, as to 'whether the application is to proceed against Ms Hope Clark alone. It is noted that the tenancy agreement refers to a joint tenant.'

A response was received by email dated 4 April confirming that the application is to proceed against Hope Clark only. The joint tenant named on the tenancy agreement previously having vacated the property.

2. DECISION

The Legal Member considered the application in terms of rule 5 and 8 of the Chamber Procedural Rules. These Rules provide

Requirements for making an application

5.-(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate.

(2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met.

(3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement.

(4) The application is not accepted where the outstanding documents requested under paragraph (3) are not received within such reasonable period from the date of request as the Chamber President considers appropriate.

Rejection of application

8.-(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if.-

(a) they consider that the application is frivolous or vexatious; (b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

After consideration of the application, the attachments and submission from the applicant, the Legal Member decided that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8 (1) (a) of the Procedural Rules.

3. Reasons for the Decision

'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Chamber President has considered as the test in this application, and on consideration of this test, the President considers that this application is frivolous and is misconceived and has no prospect of success for the following reasons:-

The Housing (Scotland) Act 1988, as amended, requires by virtue of Section 33 (1) that '...the First-Tier Tribunal for Scotland shall make an order for possession of the house if it is satisfied-

- (a) that the short assured tenancy has reached its end;
- (b) that tacit relocation is not operating;
- (c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and
- (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating he requires possession of the house.'

In a joint tenancy it is necessary to serve the Notice to Quit on all tenants where a Landlord is seeking recovery of possession of heritable property.

There is no evidence provided that either the Notice to Quit or Notice in terms of Section 33(1)(d) of the Housing (Scotland) Act 1988 were served on the Respondent.

For the foregoing reasons, the Legal Member does not consider the First-tier Tribunal for Scotland to have jurisdiction in this case and therefore the application is misconceived and is rejected on the basis that it is frivolous.

What you should do now

If you accept the Legal Member's decision, there is no need to reply . If you disagree with this decision -

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

A Mathie

Mrs. Anne Mathie
Legal Member
13 April 2018